

### House Spyware Bill Modified, Advances

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A House bill aimed at cracking down on spyware cleared a House Commerce subcommittee Thurs., with full Committee Chmn. Barton (R-Tex.) repeating his vow to press it through the House. HR-2929 by Reps. Bono (R-Cal.) and Towns (D-N.Y.) has been the subject of extensive negotiations over the last several months, particularly following a recent hearing in the House Commerce Subcommittee on Commerce. Subcommittee Chmn. Stearns (R-Fla.) at a markup Thurs. offered a substitute amendment resulting from those negotiations, and while it cleared the subcommittee without debate or objections, some members said they believe the bill still needs work before it clears the full committee.

HR-2929 would require any software about to be downloaded onto one's computer to come with explicit warnings about its nature and ability to track one's information, as well as require an opt-in approach before it was downloaded. This is a significant legislative departure from past Internet-related legislation such as the CAN-SPAM Act, which operates on an opt-out basis. In addition, the software would have to be easily disabled. Software makers have expressed concern that the bill could make impossible everything from security patch updates to adult content filtering, while privacy advocates have called for legislation targeting privacy violations, rather than a definition of spyware.

"While we have wrestled with numerous and thoughtful definitions" of spyware, Stearns said, what's indisputable is that a computer user should have the right to safeguard that computer. He said the revised bill -- negotiated by Stearns and Subcommittee ranking Democrat **Schakow sky** (Ill.),

Barton and full Committee ranking Democrat Dingell (Mich.), as well as Bono and Towns -- takes steps to ensure spyware won't be installed and "provides permanent eviction for guests that never leave." Stearns noted the bill now prohibits specific "unfair and deceptive practices" such as keystroke logging and remote-controlled denial-of-service attacks. It also allows the FTC to pursue triple damages for each violation, up to 33,000 per violation, or up to 3 million for certain violations. "The key to any successful piece of legislation is enforcement," Stearns said.

**Schakowsky** said the bipartisan negotiations were so open that she would endorse the bill's move to full committee even though she isn't completely satisfied yet. She wants more work done on penalties, and wants more assurance the bill isn't too broad. **Schakowsky**

**y** and Rep.

McCarthy (D-Mo.) both were pleased the bill allows state attorneys gen. to bring cases, and

**Schakowsky**

said "I appreciate that the bill does not undermine private right-of-action" against spyware operators. The House Commerce Committee leadership vigorously opposed inclusion of private right-of-action in last year's spam bill, and its inclusion in the spyware bill is another congressional shift.

Bono cited a new study by EarthLink and Webroot Software that examined nearly 421,000 computers and found spyware on 1/3 of them. Subcommittee members praised Bono for aggressively pushing her legislation, including her chief Democratic cosponsor, Towns. Towns also praised Barton, noting at the spyware hearing the chairman "said he would move Heaven and Earth to move this legislation. Well, I understand from staff that Earth has been moved and Heaven is on standby." Like **Schakowsky**, he said he wanted to ensure that the legislation isn't overbroad: "I do not think anyone wants to pass legislation that stifles legitimate software." Towns said he believed the substitute bill found the right balance, but noted revisions were done so quickly "to meet the congressional schedule" and allow it to become law this year that some changes haven't received outside comment. While open to further changes, however, Towns said "it is not my intention to support changes that would undermine the underlying concerns of the bill," namely protecting individuals' computers and privacy.

Barton continued to be bullish on the bill's chances, even with the limited time left in an election-year Congress in which appropriations bills remain unresolved. He vowed to mark it up soon in full committee. Barton cited bipartisan cooperation on the committee and "excellent cooperation with stakeholders" for believing the bill could "soon go to the [House] floor, and sometime this year become law." Senate Communications Subcommittee Chmn. Burns (R-Mont.) also has a spyware bill, and has been working with software and privacy experts on a proper spyware definition before marking up his bill at subcommittee. In a rush to move spam legislation last fall, the House dropped its effort to move its own legislation and adopted the Senate bill after negotiating some revisions with the Senate. Barton implied a reverse process could occur with spyware. Several House members Thurs. referred to a growing backlash among consumers against spyware and the increasing cost it has on productivity; a similar backlash sped spam legislation to passage last Dec. after years of languishing in House and Senate committees.

Congress also was motivated to move spam legislation last year by the passage of state anti-spam laws, particularly one in Cal. that would have become law this year if not preempted by CAN-SPAM. Utah enacted a new law earlier this year against spyware that's opposed by both software and privacy interests as overbroad; that law is being challenged in court. The Cal. legislature is advancing spyware legislation. -- Patrick Ross

